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Paper No. 12

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**COPY MAILED**

MAR 26 2004

In re Application of  
John William Tocher  
Application No. 09/981,060  
Filed: October 18, 2001  
Title of Invention: ULTIMATE VENT

**OFFICE OF PETITIONS  
VACATED DECISION**

This decision vacates the decision which was originally mailed on July 16, 2003 under 37 CFR 1.137(a), filed September 3, 2003, to revive the above-identified application.

The petition to revive under 37 CFR 1.137(a) is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. § 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely submit a response to the September 12, 2002 non-final Office Action. The Office Action set a 3 month shortened statutory period for reply. A one month extension of time pursuant to 37 C.F.R. § 1.136(a) was obtained. However, a response to the Office Action was not received. Accordingly, this application became abandoned on January 13, 2003. A Notice of Abandonment was mailed on May 6, 2003.

**PETITION TO REVIVE UNDER 37 CFR 1.137(a)**

A grantable petition under 37 CFR 1.137(a) must be accompanied by:

- (1) the required reply,<sup>1</sup>
- (2) the petition fee,
- (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition lacks item (2).

Office records do not reflect receipt of the funds referenced in the petition submitted on

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<sup>1</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

July 3, 2003. Payment of the petition fee is a prerequisite of treatment of the petition. Any renewed petition should be submitted with a petition fee or proof that the petition fee was received with the original petition.

### Alternative Venue

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by the required reply, the required petition fee, and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional.

The filing of a petition under 37 C.F.R. § 1.137(b) cannot be intentionally delayed, and therefore, must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 C.F.R. § 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 C.F.R. § 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:                                      Mail Stop Petition  
   Commissioner for Patents  
   P.O. Box 1450  
   Alexandria, VA 22313-1450

By facsimile:                                (703) 872-9306

By delivery service:                      U.S. Patent and Trademark Office  
(FedEx, UPS, DHL, etc.)                2011 South Clark Place  
   Customer Window, Mail Stop Petition  
   Crystal Plaza Two, Lobby, Room 1B03  
   Arlington, VA 22202

Telephone inquiries should be directed to the undersigned at (703) 306-0251.



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